

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Enoch Sowah	Team: Squad #7	CCRB Case #: 201807762	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/14/2018 10:30 PM	Location of Incident: 533 Ocean Avenue in Brooklyn	Precinct: 70	18 Mo. SOL 3/14/2020	EO SOL 3/14/2020	
Date/Time CV Reported Wed, 09/19/2018 1:54 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/19/2018 1:54 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Leon Batson	29265	938037	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nicholas Dirico	20783	965052	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Leon Batson	Abuse: Police Officer Leon Batson issued a summons to § 87(2)(b)	
B.POM Leon Batson	Discourtesy: Police Officer Leon Batson acted discourteously toward § 87(2)(b)	
C.POM Leon Batson	Off. Language: Police Officer Leon Batson made remarks to § 87(2)(b) based upon race.	

### Case Summary

On September 19, 2018, § 87(2)(b) called the CCRB and filed this complaint.

On September 14, 2018, at approximately 10:30 p.m., in the vicinity of 533 Ocean Avenue in Brooklyn, Police Officers Lean Batson and Nicholas DiRico of the 70<sup>th</sup> Precinct stopped a vehicle in which § 87(2)(b) was an occupant. PO Batson issued § 87(2)(b) three vehicle and traffic violation summonses and one disorderly conduct summons (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Batson threw the summonses inside § 87(2)(b) vehicle (**Allegation B: Discourtesy**, § 87(2)(g)), and said to him, “Have a good night dumb nigger” (**Allegation C: Offensive Language**, § 87(2)(g)).

There is no video evidence in this case.

### Findings and Recommendations

#### Allegation (A) Abuse of Authority: Police Officer Leon Batson issued a summons to

§ 87(2)(b)

§ 87(2)(b) (BR01) said that he was double parked in front of 533 Ocean Avenue in Brooklyn, and was waiting to pick up a female passenger, when PO Batson and PO DiRico, who were in a patrol car and heading southbound on Ocean Avenue, pulled up next to his vehicle. PO Batson ordered § 87(2)(b) to move his vehicle. § 87(2)(b) said that he was waiting for a passenger and that he would move immediately the passenger arrived. PO Batson asked § 87(2)(b) why his front license plate was missing. § 87(2)(b) said that his front license plate was in his trunk and that it fell off during a prior accident. PO Batson then drove off.

Approximately two minutes later, § 87(2)(b)'s passenger entered his vehicle, but just as § 87(2)(b) was about to drive off, he heard an order through a patrol car intercom system not to move. § 87(2)(b) looked through his rearview mirror and saw PO Batson and PO DiRico exiting the patrol car and approaching his vehicle's driver's and front passenger's sides, respectively. PO Batson ordered § 87(2)(b) to produce his license and registration, and said § 87(2)(b) was stopped because of his missing front license plate. § 87(2)(b) said his front license plate was in his trunk and offered to show it to PO Batson. PO Batson again ordered § 87(2)(b) to produce his driver's license and registration. He then told the female passenger to order another livery taxi because § 87(2)(b) was legally stopped and was going to be at the location for a while. The female exited and walked away. § 87(2)(b) provided his license and vehicle documents to PO Batson. PO Batson and PO DiRico then walked to their patrol car. § 87(2)(b) exited his vehicle and attempted to show PO Batson his front license plate, which was in his trunk, but PO Batson yelled and ordered him to return to his vehicle. § 87(2)(b) complied and remained inside his vehicle for the duration of this incident.

Approximately 30 minutes later, PO Batson and PO DiRico, returned to § 87(2)(b)'s driver's and front passenger's sides, respectively. PO Batson said § 87(2)(b) would receive three vehicle and traffic summonses for double parking, an obstructed windshield, and no front license plate, and one summons for disorderly conduct. § 87(2)(b) asked PO Batson why he was receiving a summons for disorderly conduct. PO Batson said because § 87(2)(b) failed to quickly comply with officers' orders. § 87(2)(b) said that he complied with all the officers' orders, was not loud or belligerent, and did not use profanities during this incident. He also said there were no civilians on the scene.

On the “factual allegations” section of the summons, PO Batson wrote that § 87(2)(b) was “observed causing public alarm and inconvenience, and engaging in threatening and violent behavior in public.” On the “defendant stated in my presence” section of the summons, PO

Batson wrote that § 87(2)(b) said “Fuck you, fucking asshole. I’m not a criminal. Fucking ass.” (BR02).

PO Batson (BR03) corroborated § 87(2)(b)’s account, but with the following exceptions. He said § 87(2)(b) was double parked in a bicycle lane and that he ordered § 87(2)(b) multiple times to move his vehicle because the location was prone to bicycle and motor collision and that there had also been multiple shootings at the location that involved vehicles that were double parked. § 87(2)(b) however ignored PO Batson’s order, and remained at the location. Upon approach, PO Batson informed § 87(2)(b) that he would receive three summonses for double parking, an obstructed windshield, and missing a front license plate. § 87(2)(b) became irate and began to yell profanities at PO Batson. § 87(2)(b) allegedly said to PO Batson, “I am no fucking criminal, you got these people selling weed and you are here harassing me. You are acting tough because you got a badge and a gun and that if you didn’t have them I’ll kick your ass.” PO Batson did not respond to § 87(2)(b) and decided at that point to issue § 87(2)(b) a disorderly conduct summons for cursing, threatening and engaging in violent behavior in public.

PO Batson also said that § 87(2)(b)’s yelling caused some individuals who had already gathered on the sidewalk and in front of some of the residential buildings to focus their attention towards § 87(2)(b) and the officers. Some of the individuals, upset that § 87(2)(b) had characterized them as criminals, called used profanities against § 87(2)(b) and called him “a dumb nigger.” § 87(2)(b) replied and used profanities against these individuals, but PO Batson did not recall what he said. PO Batson also did not recall how many involved themselves in this incident, nor did he recall how far away they were from the officers and § 87(2)(b) but said that the location was always busy and filled with people hanging out and running their errands.

PO DiRico (BR04) said that § 87(2)(b)’s front passenger’s window was closed when he approached, and that he did not hear the interaction between § 87(2)(b) and PO Batson. At some point, § 87(2)(b) began to curse at PO Batson, but PO DiRico did not recall what § 87(2)(b) said nor did he know why § 87(2)(b) used profanities against PO Batson. § 87(2)(b) was not loud in his interaction with the officers, and although there were people on the sidewalks and on the streets, none of them were drawn to this incident, nor did they engage with § 87(2)(b) or the officers. PO DiRico said § 87(2)(b) received the disorderly conduct summons because he used profanities and made offensive remarks towards PO Batson.

§ 87(2)(b) summons does not appear in the Office of Courts Administration (OCA) database. On December 12, 2018, a call to the Brooklyn Criminal Court Summons Section indicated that the case remains open, and that § 87(2)(b)’s next court appearance was scheduled for § 87(2)(b).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof: engages in fighting or in violent, tumultuous, or threatening behavior; makes unreasonable noise; uses abusive or obscene language or makes an obscene gesture in public place; without lawful authority disturbs any lawful assembly or meeting of persons; obstructs vehicular or pedestrian traffic; congregates with other persons in a public space and refuses to comply a lawful order of the police to disperse; or creates a hazardous or physical offensive condition by any act which serves no legitimate purpose. NYS Penal Law § 240.20 (BR05)

In People v. Baker, 20 N. Y. 3d 354 (2013) (BR06), the court established that the mere use of coarse language towards a police officer is not enough, alone, to constitute the public harm element required for disorderly conduct. An isolated verbal exchange between an individual and a

police officer, without any other aggressive action or extenuating circumstance, is not likely to constitute disorderly conduct. Likewise, the mere presence of spectators, without any indication that these spectators are likely to be involved in the dispute, is not enough to constitute disorderly conduct. The court also established in People v. Tichenor, 89 N. Y. 3d 769 (1997), (BR07), that disorderly conduct applies to words and utterances coupled with the intent to cause public disorder, and that private annoyances, however exasperating or reprehensive, are insufficient to constitute disorderly conduct where no breach of the peace has resulted or is imminent, People v. Zongone, 102 Misc.2d 265 (1979) (BR08).

§ 87(2)(g)

**Allegation (B): Police Officer Leon Batson acted discourteously towards § 87(2)(b)**

**Allegation (C): Police Officer Leon Batson made remarks to § 87(2)(b) based upon race.**

§ 87(2)(b) said that PO Batson first gave him two summonses, his driver's license and his vehicle's documents. PO Batson then began to explain to § 87(2)(b) how to respond to the summonses, but § 87(2)(b) said he was not interested and asked PO Batson to hand over the remaining summonses so he could leave. PO Batson reached his hand inside § 87(2)(b)'s driver's window and dropped the summonses on § 87(2)(b)'s lap. PO Batson then said to § 87(2)(b) "have a good night, dumb nigger!" and walked away. § 87(2)(b) replied, "I'll pray for you," and drove off. § 87(2)(b) did not at any point refuse to receive the summonses from PO Batson, nor did he use any profanities towards PO Batson.

PO Batson and PO DiRico both said that PO Batson handed the summonses to § 87(2)(b) and that § 87(2)(b) received the summonses. They both denied that PO Batson threw the summonses inside § 87(2)(b)'s vehicle, nor did he make the alleged offensive remark to § 87(2)(b).

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

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- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR09).
- PO Batson has been a member-of-service for 14-years and has been a subject in 18 CCRB complaints and 31 allegations, two of which were substantiated:
  - Case #201705694 involved substantiated discourtesy and refusal to provide name/shield allegations against PO Batson. The Board recommended Command Discipline A. The NYPD is yet to impose discipline.
  - § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- On December 12, 2018, a Notice of Claim inquiry was sent to the NYC Office of the Comptroller, and the inquiry is still pending. The results will be added to the case file upon receipt (BR10).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date